

PT 96-34
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE STREETERVILLE CORPORATION)		
Applicant)		
)	Docket #	93-16-1383
v.)		
)	Parcel Index #s	17-10-205-001
)		17-10-205-002
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Thomas E. Brannigan appeared on behalf of the Streeterville Corporation.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on March 25, 1996, to determine whether or not Cook County parcels numbered 17-10-205-001 and 17-10-205-002 qualified for exemption from real estate tax for the 1993 assessment year.

Mr. Larry Lathrop, facility manager of the Erie-McClurg Self-Park, who is an employee of Standard Parking Corporation (hereinafter referred to as "Standard Parking"), Ms. Marilyn Kangas, director of real estate services of the Streeterville Corporation (hereinafter referred to as the "Applicant") and Mr. Randy Johnson, manager of financial planning for both Northwestern Memorial Hospital (hereinafter referred to as "Northwestern") and the applicant, were present and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant owned these parcels during the 1993 assessment year. The second issue is whether the applicant is a charitable organization. The last issue is whether this parcel

was used by the applicant for exempt parking purposes during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant was the owner of these parcels during the 1993 assessment year. It is further determined that the applicant is a charitable organization. Finally it is determined that the applicant did not use these parcels for exempt parking purposes during the 1993 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcels here in issue did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 5A.

2. On May 25, 1994, the Cook County Board of Appeals transmitted an Application for Property Tax Exemption To Board of Appeals concerning these parcels for the 1993 assessment year, to the Department. (Dept. Ex. No. 1)

3. On October 13, 1995, the Department notified the applicant that it was denying the exemption of these parcels for the 1993 assessment year, on the ground that these parcels were not in exempt use during the said year. (Dept. Ex. No. 2)

4. By a letter dated October 18, 1995, the attorney for the applicant requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing held in this matter on March 25, 1996, was held pursuant to that request.

6. The applicant acquired this parcel pursuant to a trustee's deed dated September 24, 1992. (Dept. Ex. No. 1E)

7. The applicant was incorporated pursuant to the "General Not For Profit Corporation Act" of Illinois, on April 30, 1982. (Dept. Ex. No. 1F)

8. The purpose clause of the Articles of Incorporation of the applicant includes the following:

(a) Promote the interests of the following organizations: The Northwestern Memorial Group, Northwestern Memorial Hospital, and other organizations formally affiliated with any of the foregoing organizations which fall within the category of § 501(c)(3) of the Internal Revenue Code of 1954, as amended;...

(c) Acquire, own, use, lease as lessor or lessee, convey and otherwise deal in and with real and personal property and any interest therein, all in support of or in furtherance of the charitable purposes of the organizations described in subsection (a) of this section; (Dept. Ex. No. 1F)

9. I take administrative notice of the fact that in Docket No. 94-16-1448 the Department determined that the applicant is a charitable organization.

10. The parcels here in issue are improved with a 10 story concrete parking ramp with a basement which is located at the corner of Erie Street and McClurg Court in downtown Chicago. (Dept. Ex. No.1) (Tr. p. 13)

11. The applicant is an affiliate of Northwestern which owns non-hospital real estate for Northwestern. (Tr. pp. 44 & 45)

12. During all of 1993, the applicant leased a portion of the street level of this building as well as a storage area to McDonald's Corporation, (hereinafter referred to as "McDonald's") which operated a restaurant in the leased premises. McDonald's paid \$63,130.00 plus a commission of over 1.5 million dollars in rent to the applicant during 1993. (Tr. p. 21)

13. During all of 1993, the applicant leased the basement of the building on these parcels to CBS, which used that area to store its nine minivans and other maintenance vehicles. The CBS television studios are located across the street from these parcels. During 1993, CBS paid the applicant rent totaling \$135,200.00. (Tr. p. 21)

14. The applicant presented an architect's area analysis which indicates that the area leased to McDonald's and CBS totals 13,809.1 square feet or 4.59 percent of the total square footage of the parking structure on these parcels. (Appl. Ex. No. 1)

15. The attorney for the applicant in his closing argument, freely admitted that the leases to McDonald's and CBS were leases for profit, and that the areas subject to those leases did not qualify for exemption. (Tr. pp. 62 & 63)

16. The photograph of the building on these parcel indicates that over the entrances on both Erie Street and McClurg Court were signs which stated "Public Self Park". (Dept. Ex. No. 1N)

17. Standard Parking during 1993, operated the parking facilities in this building other than the areas leased to McDonald's and CBS, pursuant to a Parking Facility Management Agreement, dated September 25, 1992. Said Management Agreement contains a term of 5 years. (Dept. Ex. No. 1AR)

18. During the calendar year 1993, Standard Parking offered a discounted monthly rate for parking to Northwestern employees. The Human Resources department at Northwestern would refer the employees to Standard Parking. With proof of employment at Northwestern, Standard Parking would have them fill out an application and would issue them a key card. The rate during 1993, for Northwestern employees was \$70.00 per month. The regular monthly parking rate at this facility during 1993 was \$145.00 per month. (Tr. pp. 22 & 23)

19. During 1993, the key card holding Northwestern employees would gain access to the garage by inserting their card in the card reader which would open the gate. (Tr. p. 19)

20. Persons who did not have a key card would gain access to the garage by pressing a button on a machine which would issue a ticket and open the gate. (Tr. p. 19)

21. The Rehabilitation Institute of Chicago (hereinafter referred to as the "Institute") also had an agreement with Standard Parking whereby patients of the Institute could obtain a discounted parking rate by taking their parking ticket from the parking structure on these parcels over to the security desk at the Institute and have it validated. (Tr. p. 25)

22. No evidence or testimony was presented at the hearing, I find, that the Institute was a charitable organization.

23. Northwestern also had an arrangement with Standard Parking whereby employees could obtain either an all day or evening discount validation from

Northwestern to place on their parking tickets from this parking structure.
(Tr. p. 34)

24. During 1993, other than 22 designated handicapped parking spaces, and a few parking spaces reserved for Standard Parking employees, all of the parking spaces were open and available to any person who had been admitted to this parking structure. (Tr. p. 17 & 35)

25. The applicant submitted an exhibit which identified vehicles which parked in this parking structure during the month of October 1993. This exhibit indicated that during that month 21,250 users received some form of Northwestern discount, 2,776 users received an Institute discount and 4,878 users did not receive any discount. There were a total of 28,904 users of this parking facility during the month of October 1993, of which 21,250, or 74 percent of those users were employees of Northwestern. The remainder were either Institute patients or simply members of the public. (Appl. Ex. No. 4)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Supreme Court, long ago, determined that the question of whether property is exempt from taxation, depends upon the constitutional and statutory provisions in force, at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922). This exemption application concerns the 1993 assessment year, consequently this request for exemption will be considered pursuant to the terms of the Revenue Act of 1939.

35 **ILCS** 205/19.7 exempts certain property from taxation in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is

actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;....

35 **ILCS** 205/19.16 exempts certain parking areas as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided hereinbefore and owned by any...non-profit hospital...or charitable institution which meets the qualifications for exemption.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); and Board of Certified Safety Professionals V. Johnson, 112 Ill.2d 542 (1986).

As previously pointed out, the attorney for the applicant in his closing argument at the hearing, admitted that the leases to McDonald's and CBS were leases for profit, and that the areas subject to those leases did not qualify for exemption.

The applicants attorney then contends that the remainder of the parking structure on these parcels do qualify for exemption pursuant to the decision in Northwestern Memorial Foundation v. Johnson, 141 Ill.App.3d 309 (1st Dist. 1986). However, there are substantial differences between the facts in the Northwestern case and the facts in this case. In the Northwestern case the parking lot was a surface parking lot used exclusively for parking by the

employees of Northwestern Memorial Hospital. In this case the parking structure has large signs prominently hung over the entrances proclaiming that this structure is a "Public Self Park" structure. By the applicant's own admission only 74 percent of the vehicles using this parking structure during the month of October 1993 were employees of Northwestern. The remainder were either members of the general public or patients going to the Institute. As previously pointed out, no evidence was offered that the Institute was a charitable organization. The Department has previously determined that the applicant is a charitable organization. I also am satisfied that the agreement between the applicant and Standard Parking is, as a matter of law, a management agreement and not a lease. However the fact remains that anyone entering this structure may park anywhere, except for the limited number of handicapped spaces and also the Standard Parking employee spaces. By Standard Parking's own records, during the month of October 1993, 26 percent of the users of this parking structure were not there for an exempt purpose, namely providing parking for employees of Northwestern. There is no way to identify which parking spaces were used for nonexempt purposes. Twenty six percent of the use of this facility is most certainly more than a merely incidental non-exempt use. Where as here, the property as a whole was used for both exempt and nonexempt purposes, it will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is only incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971) and also MacMurray College v. Wright, 38 Ill.2d 272 (1967). I therefore conclude that this case is distinguishable from the Northwestern Memorial Foundation v. Johnson case. I further conclude that the parcels here in issue and the 10 story parking ramp located thereon did not qualify for exemption during the 1993 assessment year.

I therefore recommend that Cook County parcels numbered 17-10-205-001 and 17-10-205-002 and the 10 story parking ramp located thereon remain on the tax rolls for the 1993 assessment year. I further recommend that said parcels and

improvements be assessed to the applicant, the owner thereof, for the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
September 27, 1996